

SETTLEMENT AGREEMENT
BETWEEN
CENTER FOR ADVANCED PUBLIC AWARENESS
And
ALEX BRANDS

This Settlement Agreement is entered by and between Center for Advanced Public Awareness (“CAPA”) and Alex Brands and Alex Toys, Inc. (“Alex Brands”), with each individually referred to as a “Party” and, collectively, as the “Parties”, in order to resolve the allegations contained in the May 6, 2019 60-Day Notice of Violation (“Notice”).

1. INTRODUCTION

1.1 Parties

CAPA is a California-based non-profit organization who seeks to protect the environment through the elimination or reduction of toxic chemicals utilized in manufacturing consumer products and to increase public awareness of those chemicals by promoting environmentally sound practices and corporate responsibility. Alex Brands employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (Proposition 65).

1.2 General Allegations

CAPA alleges that Alex Brands manufactures, imports, sells and/or distributes for sale in California clothing with vinyl components containing di(2-ethylhexyl)phthalate (“DEHP”) and that it does so without providing the health hazard warning CAPA alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are clothing with vinyl components containing DEHP that are manufactured, imported, distributed, sold or offered for

sale in California by Alex Brands, including, but not limited to, the *Backyard Safari Cargo Vest*, Model # 1641170, UPC #4 23450 41181 1, hereinafter, the “Products.”

1.4 60-Day Notice of Violation

On May 6, 2019, CAPA served Alex Brands, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Alex Brands violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Alex Brands denies the material, factual and legal allegations contained in the Notice and maintains that all products it has sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Alex Brands of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Alex Brands of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean January 1, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate

Commencing on or before the Effective Date, and continuing thereafter, Alex Brands agrees that all Products it manufactures, import, sells or distributes for sale in California shall be Reformulated Products, in accordance with and as defined by Section 2.2, below.

2.2 Reformulated Products Defined

“Reformulated Products” are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component (i.e. any component that may be touched during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Alex Brands agrees to pay a total of \$3,000 in civil penalties. The penalty payment shall be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by CAPA.

Within ten (10) days of the Effective Date, or on or before January 10, 2020, Alex Brands will deliver its civil penalty payment, in two checks, made payable as follows: (a) “OEHHA” in the amount of \$2,250; and (b) “Gates Johnson Law, in Trust for CAPA” in the amount of \$750. CAPA’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

3.2 Reimbursement of Attorneys’ Fees and Costs; Installment Payments & Timing

The Parties acknowledge CAPA and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the

issue to be resolved after the Parties settled the material terms of the agreement. Shortly after the Parties finalized the non-monetary and injunctive terms, Alex Brands expressed a desire to resolve CAPA's attorneys' fees and costs. The Parties then negotiated a resolution of the compensation due to CAPA and its counsel under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement.

Under these legal principles, Alex Brands agrees to pay a total of \$15,000 to CAPA and its counsel for all reasonable attorneys' fees and costs incurred in investigating, bringing this matter to the attention of Alex Brands' management, and negotiating a settlement in the public interest. The Parties agree Alex Brands shall be entitled to remit three equal installment payments of \$5,000 each, in separate checks made payable to "Gates Johnson Law" and delivered to the address in Section 3.3, on or before each of the following dates: January 10, 2020; February 10, 2020; and March 10, 2020. There is no penalty for early payment, should Alex Brands opt to resolve the matter in full prior to the last installment payment due date.

In the event any one of the installment payments required under this Section are "late", any remaining unpaid attorneys' fees and costs shall immediately become due and payable, pursuant to this acceleration clause. "Late" means a payment that is postmarked after its due date. Gates Johnson Law shall provide written notice, via U.S. Mail and electronic mail, to Alex Brands and its counsel in the event of a late payment. Alex Brands further agrees to reimburse Gates Johnson Law for any costs that may be reasonably incurred in any attempts to recover the remaining installment payment balance due, including, but not limited to: court filing fees and costs associated with a formal enforcement action and/or enforcement of a court-approved judgment; any attorneys' fees incurred in connection with the enforcement of this Settlement Agreement; and any other fee or costs that may be reasonably incurred to collect the debt or balance due.

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

Gates Johnson Law
c/o Kimberly Gates Johnson
2822 Moraga Street
San Francisco, CA 94122

4. CLAIMS COVERED AND RELEASED

4.1 CAPA's Release of Alex Brands

This Settlement Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Alex Brands, of any violation of Proposition 65 that was or could have been asserted by CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against Alex Brands, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Alex Brands directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers ([including, without limitation, San Diego Zoo Global](#)), franchisees, cooperative members, and licensees (collectively, Releasees), based on alleged exposures to DEHP and the failure to provide a warning about exposure to DEHP contained in Products distributed, sold or offered for sale by Alex Brands, as alleged in the Notice, prior to the Effective Date.

In further consideration of the promises and agreements herein contained, CAPA as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of CAPA's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that CAPA may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in Products distributed, sold and/or offered for sale by Alex Brands before the Effective Date, as alleged in the Notice, against Alex Brands and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Alex Brands. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Alex Brands' Products.

4.2 Alex Brands' Release of CAPA

Alex Brands, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against CAPA and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CAPA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as to the Products, then Alex Brands shall provide written notice to CAPA of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Alex Brands from any obligation to comply with any pertinent state or federal toxics control law.

7. **NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Alex Brands:

Ken Dunaj, COO & President
Alex Brands
40 Lane Road
Fairfield, NJ 07004

With a Copy to:

Robert S. Niemann, Esq.
Keller & Heckman LLP
Three Embarcadero Center, Suite 1420
San Francisco, CA 94111

For CAPA:

Kimberly Gates Johnson, Esq.
Gates Johnson Law
2822 Moraga Street
San Francisco, CA 94122

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. **COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall be deemed to constitute one and the same document.

9. **REPORTING PURSUANT TO HEALTH & SAFETY CODE § 25249.7(f)**

CAPA agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f), and shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the date this agreement is fully executed by the Parties.

10. MODIFICATION

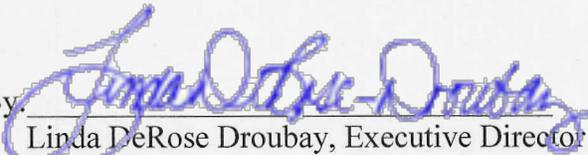
This Settlement Agreement may only be modified by the written agreement of the Parties.

11. AUTHORIZATION

The undersigned represent they have the full authority to enter into and legally bind the entities that are the subject of this Settlement Agreement. The undersigned further represent they are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

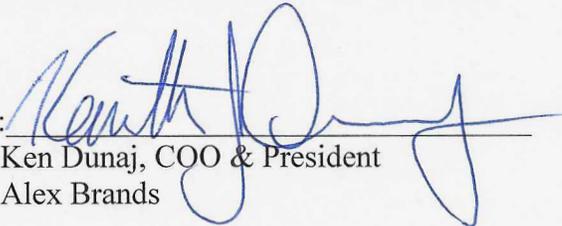
AGREED TO:

Date: 12/20/2019

By: 
Linda DeRose Droubay, Executive Director
Center for Advanced Public Awareness

AGREED TO:

Date: 12-16-19

By: 
Ken Dunaj, COO & President
Alex Brands